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THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

In re the Patent Application of: MAX ABECASSIS

SERIAL NO : 07/832,335

FILED : 02/07/92

#28

ROSE

2-29-96

FOR : VARIABLE CONTENT VIDEO EDITING SYSTEM (Amended)

ART UNIT : 2615

EXAMINER : KHOI D. TRUONG

APPELLANT'S BRIEF

February 1, 1996

Honorable Commissioner of Patents and Trademarks
Washington, D.C. 20231

Sir:

This is an appeal pursuant to 35 U.S.C. § 134 and 37 C.F.R. §§ 1.191 et seq. from the final rejection of claims 73-76. The requisite fee for submitting this Brief (\$145.00, 37 C.F.R. § 1.17(f)) is attached hereto. The Notice of Appeal from the Decision of the Examiner to the Board of Patent Appeals and Interferences was received by the Patents and Trademarks Office on December 11, 1995.

~~This is a pro se case. This brief was prepared by Appellant. Appellant does not have the benefit of formal training in the prosecution of patent applications, and is not a registered agent.~~

(1) STATUS OF CLAIMS.

Claims 1-42 were included in the application filed 02/07/92. Responsive to a restriction requirement mailed 06/15/93 defining

four groups, appellant elected without traversal group I claims 1-11 and 39-42, drawn to a video editing system to be examined, canceled claims 9-11, and added claims 43-72 also drawn to a video editing system.

A first Office Action mailed 11/17/94 withdrew claims 50-71 from consideration as being directed to a non-elected invention.

Responsive to the first Office Action, appellant canceled the then outstanding claims 1-8, 39-49, and 72, and replaced them with the currently outstanding claims 73-76.

Claims 73-76, drawn to a video editing system, are pending in the application.

(2) STATUS OF AMENDMENTS AFTER FINAL.

No amendment has been filed subsequent to the final rejection.

(3) SUMMARY OF THE INVENTION.

A video editing system and method comprising: defining, responsive to at least one preestablished content category, a plurality of segments in a video; associating at least one descriptor with at least one segment of the plurality of segments, the at least one descriptor being responsive to the at least one preestablished content category; and producing a segment map that provides for a variable arrangement of the plurality of segments.

As is detailed with respect to FIG. 3 of the specification:

"The beginning frame and end frame in each of the relevant segments is identified, the segment content is assigned a descriptor as per the category and rating structure, and logical entry and exit references are assigned 470."

(Specification page 18, lines 16-27)

"The resulting segment information is mapped and the required user interface produced 480 to permit the viewer, by selecting the desired rating level in each of the categories, to view a unique continuous sequence of segments consistent with the designated viewer preference structure." (Specification page 19, lines 7-11)

"To provide for the option of editing-out the explicit bloodshed, the program content map includes an additional segment definition beginning at frame 4112 and ending at frame 5205. The end of this segment 512 is linked to a new transitional segment 513 beginning at frame 35205 and ending at 35350, the end of which is linked to frame 6027. In this fashion, frames are omitted and added to provide a continuous transparent edited version of segment 3b." (Specification page 20, lines 5-12)

The segment map that provides for a variable arrangement of segments of a video permits a video player to produce a seamless customized version of the video that excludes segments of the video a viewer would find objectionable.

For example, if a child were to view the motion picture "The Hunt for Red October", the segment map enables a videodisc player to produce a continuous version that skips the retrieval of a segment containing graphic violence beginning at approximately 19 minutes 27 seconds and ending at 19 minutes 50 seconds. In this case the version shown the child is 23 seconds shorter than the version shown an adult viewer who does not object to the viewing of graphic violence.

(4) ISSUES.

Whether claims 73-76 are properly rejected under 35 U.S.C. § 102(b) as being anticipated by Olivo, Jr. ("Olivo"), U.S. Patent No. 5,172,111.

(5) GROUPING OF CLAIMS.

The claims do not stand or fall together as each defines the invention with a different degree of specificity and with a different degree of structural implementation.

(6) ARGUMENT.

The teachings of the patent to Olivo do not anticipate, teach, suggest or render obvious the system, method, results, or advantages of the invention which appellant is attempting to claim and to which the outstanding claims are drawn. Further, the rejection of claims 73-76 under 35 U.S.C. § 102(b) as being anticipated by Olivo is unwarranted and should be reversed.

In Olivo:

"The screening device of the present invention operates in response to detection of a material content signal," (column 4, lines 51-53)

Olivo explicitly teaches, with respect to FIGS. 2A-2C and 3, that each segment of a video is played from the video source and transmitted to the playback unit or subsystem. Responsive to the material content signal being detected, the program material signal of the segment is either made visible or invisible.

Olivo does not rearrange the retrieval or transmission of the segments of a video. As Olivo details with respect to FIG.3, in a preferred embodiment, Olivo retrieves the material content signal from "that portion of the tape that is currently being processed." (column 10, lines 28-29)

In Olivo, in the case of a viewer who does not wish to view graphic violence, the 23-second segment containing graphic violence in the motion picture "The Hunt For Red October", is

transmitted to the playback device, but is prevented from being displayed on a television by the retrieval of the MCS present during the 23 seconds.

Since the segment being "played" is blocked from being displayed, the screening device of Olivo produces a gap. In the playing of "The Hunt For Red October", Olivo's material content signal creates a 23 second gap for a viewer that does not wish to view graphic violence.

Therefore, in attempting to solve the problem it creates by producing a gap in the replay of the transmission, Olivo explicitly teaches providing the viewer a:

"stationary on-screen display (such as a sign proclaiming 'PROGRAM BLOCKED'), a prerecorded message (such as a short video program instructing the viewer on the nature of the program), or, preferably, a series of alternative scenes, corresponding to the program material in context but of a more acceptable (to the owner/operator) content, which are substituted and synchronized with the program material so as to provide what appears to be an uninterrupted program output." (column 7, lines 45-54)

If the limitation of a "segment map that provides for a variable arrangement" was met by the teaching of Olivo, Olivo would not require a "stationary on-screen display", "a prerecorded message", or "alternative scenes". It is precisely because Olivo fails to anticipate a variable arrangement of segments that it must attempt to solve the problem of a gap with "a substitution of alternative programming signals." (Olivo's claim 1)

First, a substitution of the program material signal with alternative programming signals does not anticipate a segment map

that provides for a variable arrangement of the plurality of segments of a video.

Second, the teachings of Olivo fail to recognize that in existing motion pictures, as is the case for the 23 seconds of graphic violence in "The Hunt For Red October", there are no alternative scenes that could maintain synchronization and, under Olivo, "provide what appears to be an uninterrupted program output."

On reflection it should be appreciated that Olivo's requirement for synchronization would impose an impractical rigidity even if a motion picture producer wanted to make available alternative scenes.

Under Olivo's teaching, a viewer who has chosen to exclude objectionable content in the playing of a motion picture would be presented with a stationary on-screen display for the duration of the objectionable scenes. This is a significant shortcoming of Olivo's teachings which is avoided by the segment map of the present invention.

Because the segment map of the present invention provides for a variable arrangement of segments, the skipping of objectionable content does not result in a gap in the playing of the motion picture.

In an Advisory Action dated 01/22/96, Appellant's attention is drawn to column 3, lines 29-44 of Olivo:

"the material content signal can include complex information relating to the program content of particular scenes of the program material, thus enabling the scenes (or even individual frames) of a movie to be rated on a scene-by-

scene (or frame-by-frame) basis. Depending on the complexity of the material content signal a screening device according to this invention could monitor the material content signal and prevent playback... In particular embodiments of this invention, detection of the material content signal will lead during playback to the substitution of highly rated scenes (e.g., X) with lower rated scenes (e.g., R or PG-13)."

The Advisory Action fails to appreciate that the system and methodology required to "monitor the material content signal and prevent playback" does not anticipate a segment map that provides that "only those segments comprising a continuous logical program that are consistent with the viewer preference structure is transmitted". (Specification page 30, lines 13-15) Olivo cannot monitor the material content signal of a segment it has skipped.

Further, as it has been indicated previously, in the playing of, for example, "The Hunt for Red October" there is no lower rated scene that could be substituted for the scene in which Captain Ramius graphically breaks the neck and crushes the chest of the political officer.

Olivo fails to recognize that in most cases alternate scenes that could maintain synchronization are simply not available. The segment map of the present invention, avoids the shortcomings of Olivo, by permitting a player to cut the scene out and seamlessly join the ends to eliminate any gap in the playing of the movie (i.e. "a variable arrangement").

Contrary to the teachings of Olivo, the segment map provides the information to produce, for a viewer who does not wish to view graphic violence, a seamless version of "The Hunt for Red October" that excludes the retrieval, and thus the transmission

and replay of the segment containing graphic violence.

A player utilizing the segment map of the present invention does not require to monitor a material content signal because an objectionable segment is not retrieved in the first place. Under the teachings of the present invention, the transmission of "The Hunt for Red October" to a viewer who does not wish to view graphic violence is 23 seconds shorter than the transmission of a version provided a viewer that does not object to the graphic violence.

The segment map of the present invention is structurally, methodologically and operationally distinguished from Olivo's material content signal.

The Advisory Action erroneously concludes that because Olivo's "material content signal can include complex information" it anticipates the segment map of the present invention. The Advisory Action fails to appreciate that the structure and operation of Olivo's material content signal does not anticipate either the structure and operation of the segment map or the results and advantages of the segment map.

Olivo does not provide for a variable arrangement of the segments of a video. For this reason, Olivo must rely upon and teaches a secondary program source for alternate segments to try to maintain continuity. "Line 302 carries the video output of an alternate program source (APS) (360). The APS (360) can be a second videotape player..." (Column 14, lines 30-32)

Olivo's requirement for the "normal video program material"

and "an alternate program source" (column 14) to attempt to produce an "uninterrupted program output" does not anticipate the rearranging of the segments of "a video".

Each of the claims of the present invention recite producing a segment map that provides for a variable arrangement of the segments of a video, not the arrangement of the segments of a video and an alternate program source.

A player utilizing the segment map of the present invention can produce a customized "uninterrupted program" from any motion picture without requiring an alternate program source. This is a significant advantage of the segment map which the Examiner has continued to ignore.

It is respectfully submitted to the Honorable Board that the material content signal (MCS) of Olivo does not anticipate either the structure, function, results, or advantages of the "segment map that provides for a variable arrangement of said plurality of segments" as is recited in each of the outstanding claims of the instant application.

Further, claims 72 and 74 recite in part: "a plurality of segments in a video, said plurality of segments including at least one parallel segment". Olivo's alternate program source teaches away from the means or methodology for accommodating a plurality of segments in a video, said plurality of segments including at least one parallel segment, as is recited in these claims.

Olivo cannot attempt to include a parallel segment within a

video. Doing so would not solve the problem of the gap that would be created by selecting between parallel segments.

It should be abundantly clear that Olivo simply does not anticipate doing what appellant's invention accomplishes. The following summarizes the arguments and advantages of the novel and non-obvious subject matter claimed.

Structure distinguishes Each of the outstanding claims of the present invention comprises structure and function that distinguishes over Olivo.

Results patentably distinguish The significant and useful results achieved by the present invention are different from the results achieved by Olivo, and are not suggested by Olivo.

Prior Art Teaches Away The structure and methods of the Olivo teaches away from the present invention.

Unappreciated advantages Appellant's invention addresses shortcomings in Olivo which Olivo has failed to recognize.

(7) EXAMINER'S FAILURE UNDER MPEP § 707.07(f).

The remarks in appellant's response to the first Office Action included the following:

"The specification of the present application, and the remarks herein, comprise a plurality of assertions with respect to the advantages of the present invention over the references of record."

This was followed by a request of the Examiner under MPEP § 707.07(f). MPEP § 707.07(f) teaches that:

"If it is the examiner's considered opinion that the asserted advantages are without significance in determining patentability of the rejected claims, he or she should state the reasons for his or her position in the record, By so doing the applicant will know that the asserted advantages

have actually been considered by the examiner and, if appeal is taken, the Board of Patent Appeals and Interferences will also be advised."

Appellant's response to the final Office Action reiterated Appellant's previous request under MPEP § 707.07(f).

It is respectfully submitted that the Office Actions in this case have ignored the substantial and distinguishing advantages of the results produced by the present invention over the applied art.

Appellant's respectfully asks the Examiner:

i) Doesn't Olivo's material content signal produce, for a viewer who does not wish to view graphic violence, a 23 second gap in the playing of "The Hunt for Red October", a gap for which there are no substitute scenes that could maintain an uninterrupted video output?

ii) Doesn't the segment map of the present invention avoid the problems of producing gaps in the playing of "The Hunt for Red October"?

iii) Does the Examiner deny that in a DVD embodiment the results produced by a "segment map that provides for a variable arrangement of segments" are superior to the results produced by the material content signal of Olivo?

MPEP § 707.07(f) also teaches that:

"The importance of answering such arguments is illustrated In re Herrmann et al., 1959 C.D. 159; 739 O.G. 549 where the applicant urged that the subject matter claimed produced new and useful results. The court noted that since applicant's statement of advantages was not questioned by the examiner or the Board of Appeals, it was constrained to accept the statement at face value and therefore found certain claims to be allowable."

(8) EXAMINER'S FAILURE UNDER MPEP § 707.07(j).

The remarks in appellant's response to the first Office Action also included a request under MPEP § 707.07(j). This request was also reiterated in the response to the final Office Action.

The first paragraph of MPEP § 707.07(j) teaches:

"When, during the examination of a pro se case, it becomes apparent to the Examiner that there is patentable subject matter disclosed in the application, the examiner shall draft one or more claims for the applicant and indicate in his or her action that such claims would be allowed if incorporated in the application by amendment."

It is respectfully submitted to the Honorable Board that in a pro se case the teachings of MPEP § 707.07 (j) suggests that if patentable subject matter is disclosed in the application, a mere rejection of the claims is insufficient.

If the Examiner asserts that Olivo produces the results and advantages of appellant's invention, than let the Examiner clearly state this.

In this case, the Examiner has never rejected appellant's assertion that patentable subject matter is disclosed in the application and that the claims are intended to be directed to such patentable subject matter.

Clearly, if patentable subject matter is disclosed, a proper disposition of a pro se case cannot stop with a rejection of the claims. MPEP § 707.07(j) requires that "the examiner should not stop with a bare objection or rejection of the claims. The examiner's action should be constructive in nature and when possible should offer a definite suggestion for correction."

(9) REQUEST FOR AN ORAL HEARING.

Appellant intends to request an oral hearing before the Honorable Board of Patent Appeals and Interferences.

(10) CONCLUSION.

In conclusion, the video editing system of the present invention, as recited in each of the four outstanding claims: defining, responsive to at least one preestablished content category, a plurality of segments in a video, associating, responsive to the at least one preestablished content category, a descriptor with at least one of the plurality of segments, and producing a segment map that provides for a variable arrangement of the plurality of segments, is patentably distinguished from Olivo.

It is respectfully submitted to the Honorable Board that: i) the specifications disclose patentable subject matter which is novel and non-obvious over Olivo; ii) the outstanding claims point out and are directed to such patentable subject matter; and iii) the outstanding claims are not anticipated, suggested or rendered obvious by Olivo.

Accordingly, the rejection of the claims under 35 U.S.C. § 102(b) as being anticipated by Olivo is unwarranted and should be reversed.

(11) APPENDIX.

The claims listed below are a copy of the pending claims 73-76 before the Honorable Board of Patent Appeals and Interferences.

73. A video editing system, comprising:
defining means for defining, responsive to at least one preestablished content category, a plurality of segments in a

video;

descriptor means for associating at least one descriptor with at least one segment of said plurality of segments, said at least one descriptor being responsive to said at least one preestablished content category; and

mapping means for producing a segment map that provides for a variable arrangement of said plurality of segments.

74. A video editing system, comprising:

defining means for defining, responsive to at least one preestablished content category, a plurality of segments in a video, said plurality of segments including at least one parallel segment;

descriptor means for associating at least one descriptor with at least one segment of said plurality of segments, said at least one descriptor being responsive to said at least one preestablished content category; and

mapping means for producing a segment map that provides for a variable arrangement of said plurality of segments.

75. A method of editing a video, comprising the steps of:

defining, responsive to at least one preestablished content category, a plurality of segments in a video;

associating at least one descriptor with at least one segment of said plurality of segments, said at least one descriptor being responsive to said at least one preestablished

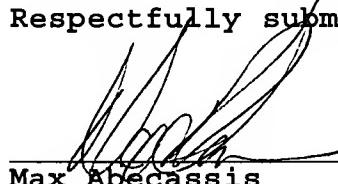
content category; and

producing a segment map that provides for a variable arrangement of said plurality of segments.

76. A method of editing a video, comprising the steps of: defining, responsive to at least one preestablished content category, a plurality of segments in a video, said plurality of segments including at least one parallel segment; associating at least one descriptor with at least one segment of said plurality of segments, said at least one descriptor being responsive to said at least one preestablished content category; and

producing a segment map that provides for a variable arrangement of said plurality of segments.

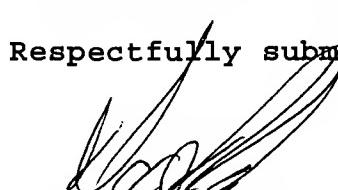
Respectfully submitted,


Max Abecassis
Appellant
305-932-1257

CERTIFICATE OF MAILING

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I hereby certify that this Appeal Brief and fee are being deposited with the United States Postal Service using certified first class mail in the date indicated above and is addressed to "Commissioner of Patents and Trademarks, Washington, DC 20231."

Respectfully submitted,


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